

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMAZON.COM INC; AMAZON.COM
SERVICES LLC; OOFOS INC,
Plaintiff,

v.

GUANGMING TANG; KANG SUN;
WENJIE FAN; XIAOFEI LIU; ZHI LI;
YACHUN HE; HAIQING HU,
Defendant.

Case No. 2:23-cv-00898-TMC

ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT

Before the Court is Plaintiffs Amazon.com, Inc, Amazon.com Services LLC (collectively, “Amazon”), and Oofos, Inc.’s (“Oofos”) motion for default judgment. Dkt. 31. None of the Defendants have appeared in this action or responded to Plaintiffs’ motion. For the reasons stated below, the Court GRANTS the motion.

I. BACKGROUND

Plaintiff Oofos sells athletic footwear through Amazon’s online store, Amazon.com. *See* Dkt 8 ¶¶ 2–3. Plaintiffs’ operative complaint¹ alleges that Defendants Guangming Tang, Kang

¹ Plaintiffs first amended complaint, Dkt. 8, is their operative complaint.

1 Sun, Wenjie Fan, Xiaofei Liu, Zhi Li, Yachun He, and Haiqing Hu² operated accounts on
2 Amazon.com through which they sold counterfeit Oofos footwear. *See* Dkt. 8 ¶ 35, 45. Plaintiffs
3 allege, on information and belief, that Defendants “operated in concert with one another in their
4 advertising, marketing, offering, distributing, and selling of” the counterfeit products. *Id.* ¶ 45.

5 After discovering the operation and “verif[ying] Defendants’ sale of counterfeit Oofos
6 products,” Amazon blocked Defendants’ selling accounts. *Id.* ¶ 48. Plaintiffs filed this case on
7 June 14, 2023. Dkt. 1. The first amended complaint raises claims for trademark counterfeiting
8 and trademark infringement under 15 U.S.C. § 1114; False Designation of Origin and False
9 Advertising under 15 U.S.C. § 1125(a); a Violation of Washington Consumer Protection Act,
10 RCW 19.86.010, et seq.; and breach of contract. Dkt. 8 ¶¶ 50–85.

11 Plaintiffs sought and were granted leave to serve Defendants through their email
12 addresses, Dkt. 20, and did so on February 28, 2024, Dkt. 21. On April 18, 2024, Plaintiffs
13 moved for default against Defendants after they failed to timely appear, Dkt. 22, which the Clerk
14 of Court granted on April 23, 2024, Dkt. 24. Plaintiffs then filed this default judgment motion on
15 June 14, 2024. Dkt. 31.

16 II. DISCUSSION

17 A. Jurisdiction

18 The Court first examines its jurisdiction when evaluating a motion for default judgment.
19 *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). First, the Court has federal question
20 jurisdiction based on Plaintiffs’ claims for trademark counterfeiting and infringement and false
21 designation of origin and false advertising under 15 U.S.C § 1121 and 28 U.S.C. § 1338,
22 respectively. The Court exercises supplemental jurisdiction over Plaintiffs’ related claims for

23 _____
24 ² The amended complaint also names Hui Yang and “Does 1-10” as defendants, but on April 19,
2024, Plaintiffs voluntarily dismissed them from the case without prejudice. Dkt. 23.

1 violations of the Washington Consumer Protection Act and breach of contract pursuant to 28
2 U.S.C. §§ 1332 and 1367. Second, the Court has personal jurisdiction over Defendants because
3 they consented to the forum selection clause in their “Business Solutions Agreements” (“BSA”)
4 with Amazon selecting state or federal court in King County, Washington. *See* Dkt. 8 ¶ 21; *Chan*
5 *v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1406–07 (9th Cir. 1994) (“[A] forum selection clause
6 alone could confer personal jurisdiction . . . [and] would be an additional basis for establishing
7 personal jurisdiction.”) Defendants also directed their sales and other business conduct toward
8 Washington State in their dealings with Amazon, therefore establishing minimum contacts, *see*
9 *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945), and a reasonable anticipation of “being haled
10 into court” here. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). The Court has
11 jurisdiction over the subject matter and the parties.

12 **B. Default Judgment Standard**

13 Motions for default judgment are governed by Rule 55 of the Federal Rules of Civil
14 Procedure. The Rule authorizes the Court to enter default judgment against a party that fails to
15 appear or otherwise defend in an action. Fed. R. Civ. P. 55. In deciding motions for default
16 judgment, courts take “‘the well-pleaded factual allegations’ in the complaint ‘as true,’ ‘except
17 those relating to the amount of damages.’” *Rozario v. Richards*, 687 F. App’x 568, 569 (9th Cir.
18 2017) (first quoting *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007); then
19 quoting *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (internal citations
20 omitted)); Fed. R. Civ. P. 8(b)(6). The court also does not accept the truth of statements in the
21 complaint that amount to legal conclusions. *DIRECTV, Inc.*, 503 F.3d at 854. “[N]ecessary facts
22 not contained in the pleadings, and claims which are legally insufficient, are not established by
23 default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

1 The “starting point is the general rule that default judgments are ordinarily disfavored.
 2 Cases should be decided upon their merits whenever reasonably possible.” *Eitel v. McCool*, 782
 3 F.2d 1470, 1472 (9th Cir. 1986). Courts weigh the following factors in deciding motions for
 4 default judgment:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
 6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
 7 stake in the action; (5) the possibility of a dispute concerning material facts;
 (6) whether the default was due to excusable neglect, and (7) the strong policy
 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

8 *Id.* at 1471–72; *see NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616–17 (9th Cir. 2016)
 9 (suggesting that district courts “weigh” the *Eitel* factors). District courts’ decisions on motions
 10 for default judgment are discretionary. *See NewGen, LLC*, 840 F.3d at 616 (“We review . . . the
 11 grant of a default judgment for abuse of discretion.”). Failure to establish the second and third
 12 factors is dispositive and requires denial of the motion. *See Cripps*, 980 F.2d at 1268 (vacating
 13 default judgment where “the default judgment [was] legally insupportable”); *United States ex*
 14 *rel. Lesnik v. Eisenmann SE*, No. 16-CV-01120-LHK, 2021 WL 4243399, at *11 (N.D. Cal.
 15 Sept. 17, 2021) (noting that “failure to satisfy the second and third *Eitel* factors is sufficient to
 16 deny a motion for default judgment”).

17 **C. Plaintiffs are entitled to Default Judgment.**

18 For the following reasons, the Court agrees with Plaintiffs that the *Eitel* factors favor
 19 default judgment.

20 *1. Possibility of prejudice to Plaintiffs*

21 Under the first *Eitel* factor, the Court considers whether Plaintiffs will suffer prejudice if
 22 default judgment is not entered. *See, e.g., PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
 23 1177 (C.D. Cal. 2002). Plaintiffs filed suit in June 2023 (Dkt. 1) and no Defendant has responded
 24 or otherwise defended in this action. Plaintiffs would be prejudiced without entry of default

judgment because they would be left without legal remedy given Defendants' lack of response. *See, e.g., Alliant Credit Union v. Williams*, No. CV18-8483-GW(PLAx), 2020 WL 10963955, at *4 (C.D. Cal. Feb. 13, 2020). The first *Eitel* factor weighs in favor of default judgment.

2. *Substantive merits and sufficiency of the complaint*

The second and third *Eitel* factors, concerning the merits of the plaintiff's claim and the sufficiency of their complaint, are "often analyzed together." *See, e.g., Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014) (citing *PepsiCo*, 238 F. Supp. 2d at 1175). These two factors weigh in favor of default judgment when the plaintiff's complaint contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Courts cannot enter default judgment if the complaint fails to state a claim. *See Moore v. United Kingdom*, 384 F.3d 1079, 1090 (9th Cir. 2004). Here, Plaintiffs assert they have established Defendants' liability as to all claims. The Court examines each claim in turn.

a. *Trademark infringement*

First, Oofos seeks entry of default judgment on its claim that Defendants infringed its trademarks in violation of the Lanham Act, 15 U.S.C. § 1114.

To state a claim for trademark infringement under the Lanham Act, Oofos must plausibly allege that Defendants used: "(1) a reproduction, counterfeit, copy or colorable imitation of plaintiff's registered trademark, (2) without its consent, (3) in commerce, (4) in connection with the sale, offering for sale, distribution or advertising of any goods, (5) where such use is likely to cause confusion, or to cause a mistake or to deceive." *Amazon v. Kurth*, No. C18-0353-RAJ, 2019 WL 3426064, at *2 (W.D. Wash. July 30, 2019) (citing 15 U.S.C. § 1114(1)(2)).

"The 'likelihood of confusion' inquiry generally considers whether a reasonably prudent consumer in the marketplace is likely to be confused as to the origin or source of the goods or

1 services bearing one of the marks or names at issue in the case.” *Rearden LLC v. Rearden Com.,*
2 *Inc.*, 683 F.3d 1190, 1209 (9th Cir. 2012). When a defendant uses a counterfeit mark, courts
3 presume a likelihood of consumer confusion. *See Coach, Inc. v. Pegasus Theater Shops*, No.
4 C12-1631-MJP, 2013 WL 5406220, at *3 (W.D. Wash. Sept. 25, 2013) (compiling cases). A
5 “counterfeit” is a “spurious mark which is identical with, or substantially indistinguishable from,
6 a registered mark.” *Id.*

7 Here, Oofos alleges that owns the registered trademarks nos. 4,140,410 and 4,407,860.
8 Dkt. 8 ¶ 4. It asserts it conducted “test purchases” of products sold by Defendants and
9 determined that they each bore a counterfeit Oofos trademark. *Id.* ¶ 43. Accepting these
10 allegations as true, *Rozario*, 687 F. App’x at 569, the Court concludes it is likely that a
11 reasonable consumer would have been deceived by Defendants into confusing their counterfeit
12 merchandise with genuine Oofos products. *See Coach*, 2013 WL 5406220, at *3. The second and
13 third *Eitel* factors therefore weigh in favor of entry of default judgment on Oofos’s claim against
14 Defendants for trademark infringement in violation of 15 U.S.C. § 1141(1)(1).

15 *b. False designation of origin*

16 Second, Oofos and Amazon seek entry of default judgment on their claims for
17 Defendants’ false designation of the origin of products or services under 15 U.S.C. § 1125(a). A
18 claim for false designation of origin must plausibly allege that a defendant: “(1) used in
19 commerce (2) any word, false designation of origin, false or misleading description, or
20 representation of fact, which (3) is likely to cause confusion or mistake, or to deceive, as to
21 sponsorship, affiliation, or the origin of the goods or services in question.” *Luxul Tech. Inc. v.*
22 *Nectarlux, LLC*, 78 F. Supp. 3d 1156, 1170 (N.D. Cal. 2015) (citing *Freecycle Network, Inc. v.*
23 *Oey*, 505 F.3d 898, 902–04 (9th Cir. 2007)). Generally, “[a]lthough there are some differences
24 between a trademark infringement claim under § 1114 and a false designation of origin claim

1 under § 1125(a), ‘the analysis under the two provisions is oftentimes identical.’” *Entrepreneur*
2 *Media, Inc. v. Doe*, No. 8:19-cv-01706-JLS-JDE, 2020 WL 6811475, at *4 (C.D. Cal. Oct. 21,
3 2020).

4 “[A] plaintiff suing under § 1125(a) ordinarily must show economic or reputational injury
5 flowing directly from the deception wrought by the defendant's advertising; and that . . . occurs
6 when deception of consumers causes them to withhold trade from the plaintiff.” *Lexmark Int'l.,*
7 *Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). A plaintiff need not be the
8 owner of the infringed trademark to prevail on the claim. *Id.*

9 Both Oofos and Amazon have sufficiently alleged and proven their false designation
10 claims. As discussed above, *supra* Section 2.C.2.a., Defendants advertised and sold counterfeit
11 Oofos-branded products through Amazon.com selling accounts. Plaintiffs allege this conduct
12 misled consumers into purchasing counterfeit Oofos merchandise believing that they were
13 genuine products. Dkt. 8 ¶¶ 5–6, 60–61. Accepting Oofos’s allegations as true, *Rozario*, 687 F.
14 App’x at 569, the Court concludes that Oofos plausibly states a claim for false designation given
15 that counterfeit versions of its products were falsely presented as genuine to consumers whose
16 misdirected purchases affected sales of genuine merchandise. The Court also finds that Amazon
17 states a plausible false designation claim. While Amazon is not an owner of the Oofos
18 trademarks, it was deceived by Defendants who presented their counterfeit Oofos merchandise as
19 authentic inventory for their Amazon.com selling accounts—causing Amazon to allow
20 counterfeit products to be sold through its website, leading to consumer harm and plausible
21 associated reputational and financial damage to Amazon. The Court concludes that Oofos and
22 Amazon have stated claims for false designation and the second and third *Eitel* factors weigh in
23 favor of entering default judgment on these claims.

24 *c. Washington Consumer Protection Act*

Third, Plaintiffs seek entry of default judgment on their claims for Defendants’ violations of the Washington Consumer Protection Act. A Washington Consumer Protection Act claim is “substantially congruous” to federal claims under the Lanham Act, *BBC Grp. NV LLC v. Island Life Rest. Grp. LLC*, No. C18-1101-RSM, 2020 WL 758070, at *2 (W.D. Wash. Feb. 14, 2020), and requires a plaintiff to show “(1) an unfair or deceptive act or practice; (2) occurring in the conduct of trade or commerce; (3) affecting the public interest; (4) injuring its business or property; and (5) a causal link between the unfair or deceptive act and the injury suffered.” *Id.* (citing *Lahoti v. Vericheck, Inc.*, No. C06-1132-JLR, 2007 WL 2570247, at *9 (W.D. Wash. Aug. 30, 2007), *aff’d*, 586 F.3d 1190 (9th Cir. 2009)). Given the above discussion, *supra* Sections 2.C.2.a.–b., the Court finds that both Oofos and Amazon have met the similar requirements of the Lanham Act and Washington Consumer Protection Act violations alleged—where deceptive commercial activity led to business injury. *See BBC Grp.*, 2020 WL 758070, at *2; *Amazon v. Kurth*, 2019 WL 3426064, at *2; *Luxul Tech.*, 78 F. Supp. 3d at 1170. The Court finds that the second and third *Eitel* factors weigh in favor of entering default judgment on Plaintiffs’ Washington Consumer Protection Act claims.

d. Breach of contract

Finally, Amazon Services LLC moves for default judgment on its breach of contract claim against all Defendants. To prove a claim for breach of contract, the plaintiff “[g]enerally . . . must prove a valid contract between the parties,” *Lehrer v. State, Dep’t of Soc. & Health Servs.*, 101 Wn. App. 509, 516 5 P.3d 722 (2000), and show four elements: duty, breach, causation, and damages. *Hard 2 Find Accessories, Inc. v. Amazon.com, Inc.*, 58 F. Supp. 3d 1166, 1171 (W.D. Wash. 2014), *aff’d sub nom. Hard2Find Accessories, Inc. v. Amazon.com, Inc.*, 691 F. App’x 406 (9th Cir. 2017); *Baldwin v. Silver*, 165 Wn. App. 463, 473, 269 P.3d 284

1 (2011). “For any breach to arise, there must first be some duty to perform.” *Hard 2 Find*
2 *Accessories, Inc.*, 58 F. Supp. 3d at 1171.

3 Amazon Services LLC alleges that Defendants agreed to the BSAs with Amazon, which
4 “specifically identifies the sale of counterfeit goods as ‘deceptive, fraudulent, or illegal activity’
5 in violation of Amazon’s policies, reserving the right to withhold payments and terminate the
6 selling account of any bad actor who engages in such conduct.” Dkt. 8 ¶¶ 36–37. The BSA
7 requires the seller to defend, indemnify, and hold Amazon harmless against any claims or losses
8 arising from the seller’s “actual or alleged infringement of any Intellectual Property Rights.” *Id.*
9 ¶ 37. The agreement also requires that “the information and documentation [sellers] provide to
10 Amazon in connection with their selling accounts—such as identification, contact, and banking
11 information—will, at all times, be valid, truthful, accurate, and complete.” *Id.* ¶ 40.

12 The Defendants also agreed, by way of the BSA, to Amazon’s Anti-Counterfeiting
13 Policy, which “expressly prohibits the sale of counterfeit goods in the Amazon Store.” *Id.* ¶ 38.
14 The policy provides, as an example of a “prohibited product,” “[p]roducts that infringe another
15 party’s intellectual property rights.” *Id.* ¶ 39.

16 Amazon Services LLC asserts that Defendants breached the BSA and Anti-
17 Counterfeiting Policy by selling counterfeit Oofos products, which it alleges infringed Oofos’s
18 intellectual property rights, *id.* ¶ 82, and “by providing Amazon with false, fraudulent, or
19 otherwise inaccurate identification, contact, and/or banking information in connection with their
20 Selling Accounts,” *id.* ¶ 84. It also alleges that Defendants’ failure to reimburse Amazon for “full
21 refunds” that Amazon issued to customers who purchased Defendants’ counterfeited products
22 violated the contract. *Id.* ¶ 49. These allegations sufficiently establish that Defendants had a duty
23 to abide by the above-mentioned policies, and that they breached their obligations under the BSA
24 and incorporated policies; Amazon Services LLC has sufficiently established the first two

1 elements of their claim. Moreover, the allegations that Defendants did not reimburse Amazon for
2 money it had to pay out as a result of Defendants' sales of counterfeited items show that
3 Defendants' conduct caused harm to Amazon. The Court finds that the second and third *Eitel*
4 factors weigh in favor of entering default judgment on Amazon Services LLC's breach of
5 contract claim.

6 3. *The sum of money at stake*

7 Under the fourth *Eitel* factor, "the court must consider the amount of money at stake in
8 relation to the seriousness of defendant's conduct." *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176–77;
9 *see also Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014)
10 ("[C]ourts take into account the amount of money requested in relation to the seriousness of the
11 defendant's conduct, whether large sums of money are involved, and whether the recovery
12 sought is proportional to the harm caused by defendant's conduct." (internal quotation marks
13 omitted)). The Court assesses whether the amount of money sought is proportional to the harm
14 caused by Defendants' conduct. "Default judgment is disfavored where the sum of money at
15 stake is too large or unreasonable in relation to defendant's conduct." *See Vogel v. Rite Aid*
16 *Corp.*, 992 F. Supp. 2d 998, 1012 (C.D. Cal. 2014).

17 Plaintiffs seek a total of \$3,127,316 in statutory damages against Defendants, Dkt. 31-1 at
18 2, based on statutory damages of not less than \$1,000 and no more than \$2,000,000 per
19 trademark affected. *See* 15 U.S.C. §§ 1117(c)(1)–(2). While the sum is substantial, Defendants'
20 conduct also resulted in a substantial estimated minimum of \$1,041,476.60 in counterfeit sales,
21 Dkt. 32 at 23 ¶ 3, and was characterized by willful infringement and misleading commercial
22 activity. The Court concludes that Plaintiffs' requested statutory damages are not unreasonable
23 relative to the scale and seriousness of the conduct alleged, taking place over two years and
24 spread across several defendants, and thus do not weigh against entry of default judgment.

1 For its breach of contract claim, Amazon Services LLC also seeks the following in actual
2 damages for sales made by selling accounts controlled by certain Defendants that they did not
3 reimburse Amazon Services for, as required by their contractual agreement: awards of \$210,937
4 against Defendant GuangMing Tang; \$175,647 against Defendant Kang Sun; \$41,994 against
5 Defendant Wenjie Fan; \$116,605 against Defendant Xiaofei Liu; \$46,517 against Defendant Zhi
6 Li; \$8,115 against Defendant Yachun He; and \$37,013 against Defendant Haiqing Hu. Dkt. 32
7 ¶ 4. The requested actual damages are directly proportional to the individual Defendants'
8 conduct and resulted from their breach.

9 Additionally, “the substantial sums that are at stake and the seriousness of the alleged
10 misconduct” also make this factor weigh in favor of default judgment. *See Amazon.com, Inc. v.*
11 *Li*, No. 2:21-cv-01512-TL, 2024 WL 1832466, at *8 (W.D. Wash. Apr. 26, 2024).

12 For the above reasons, this factor weighs in favor of default judgment.

13 4. *The possibility of dispute concerning material facts*

14 As for the fifth *Eitel* factor, no genuine issue of material fact exists, and the factor does
15 not weigh against default judgment. Once default is entered, well-pleaded factual allegations in
16 the operative complaint are taken as true except for the allegations relating to damages.
17 *TeleVideo Sys., Inc.*, 826 F.2d at 917–18. Here, all Defendants are in default. *See* Dkt. 24.

18 5. *Whether default was due to excusable neglect*

19 Under the sixth *Eitel* factor, the Court examines whether Defendants’ default resulted
20 from excusable neglect. *See PepsiCo*, 238 F. Supp. 2d at 1177. Plaintiffs have provided evidence
21 that Defendants were served, *see* Dkt. 21, 26, and there is no evidence in the record to support a
22 finding that Defendants’ failure to respond is the result of excusable neglect. Accordingly, the
23 sixth *Eitel* factor weighs in favor of default judgment.

6. *Policy favoring decisions on the merits*

Finally, the seventh *Eitel* factor favors that courts decide cases “upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. When a defendant fails to appear or defend themselves in an action, however, the policy favoring decisions on the merits is not dispositive. *See PepsiCo*, 238 F. Supp. 2d at 1177. Indeed, Federal Rule of Civil Procedure 55 allows courts to issue a default judgment if a defendant fails to appear or defend. *Id.* The Court finds that the seventh *Eitel* factor does not weigh against default judgment here.

D. Plaintiffs are entitled to remedies.

Since the Court finds the *Eitel* factors weigh in favor of entry of default judgment against Defendants, the Court now turns to remedies. *See TeleVideo Sys., Inc.*, 826 F.2d at 917– 18. The Court does not consider defaulting defendants to have admitted the facts alleged concerning damages. *Id.* at 917. Instead, plaintiffs moving for default judgment should submit “a declaration and other evidence establishing [their] entitlement to a sum certain and to any nonmonetary relief sought.” Local Rules W.D. Wash. 55(b)(2).

1. *Statutory damages*

“[S]tatutory damages may compensate the victim, penalize the wrongdoer, deter future wrongdoing, or serve all of those purposes.” *Amazon.com, Inc. v. Dong*, No. C23-159, 2024 WL 775900 (W.D. Wash. Feb. 26, 2024) (quoting *Y.Y.G.M. SA v. Redbubble, Inc.*, 75 F.4th 995, 1008 (9th Cir. 2023)). “The plaintiff, however, is not entitled to a windfall.” *Li*, 2024 WL 1832466, at *8.

Oofos seeks a total of \$3,127,316 in statutory damages against Defendants, Dkt. 31-1 at 2. Where there is willful use of a counterfeit mark, courts may award statutory damages between \$1,000 and no more than \$2,000,000 per trademark affected. *See* 15 U.S.C. §§ 1117(c)(1)–(2).

Because the Court assumes the truth of Plaintiffs’ allegations of willful infringement, *see* Dkt. 8 ¶ 46, it grants the statutory damages sought. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) (“The district court entered default and Poof concedes that its default occurred with respect to a complaint that pled wilfulness. Thus, all factual allegations in the complaint are deemed true, including the allegation of Poof’s willful infringement of Andrew’s trademarks.”). The Court finds the sum to be reasonably calculated and supported by written declaration, *see* Dkt. 32 at 3–4, and accordingly grants the statutory damages sought.

2. Actual Damages

“The general measure of damages for breach of contract is that the injured party is entitled to: (1) recovery of all damages that accrue naturally from the breach, and (2) to be put into as good a pecuniary position as he would have had if the contract had been performed.” *Entry Select Ins. Co. v. Silver Arrow Cars, Ltd.*, No. C19-0598, 2020 WL 1847749 (W.D. Wash. Apr. 13, 2020) (citing *Diedrick v. Sch. Dist. 81*, 87 Wn.2d 598, 610 (1976)).

Amazon Services LLC seeks awards of \$210,937 against Defendant GuangMing Tang; \$175,647 against Defendant Kang Sun; \$41,994 against Defendant Wenjie Fan; \$116,605 against Defendant Xiaofei Liu; \$46,517 against Defendant Zhi Li; \$8,115 against Defendant Yachun He; and \$37,013 against Defendant Haiqing Hu. Dkt. 32 ¶ 4. These are the amounts Amazon Services LLC paid consumers who bought counterfeit goods sold by these Defendants’ accounts. *See id.* Because Defendants agreed to reimburse Amazon for these payments, the Court finds these damages to be appropriate and just.

3. Permanent Injunction

Plaintiffs also seek a permanent injunction enjoining Defendants from:

- a. selling counterfeit or infringing products in Amazon’s stores;

- b. selling counterfeit or infringing products to Amazon or any Amazon affiliate;
- c. importing, manufacturing, producing, distributing, circulating, offering to sell, selling, promoting, or displaying any product or service using any simulation, reproduction, counterfeit, copy, or colorable imitation of Oofos's brand or trademarks, or which otherwise infringes Oofos's intellectual property, in any store or in any medium; and
- d. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (c) above.

Dkt. 8 § VI(A). The Lanham Act authorizes the Court to “grant injunctions according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the trademark owner.” *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1137–38 (9th Cir. 2006) (internal quotations omitted). Similarly, the Washington Consumer Protection Act also allows parties to seek a permanent injunction to prevent further violations. RCW 19.86.090. A permanent injunction is “an act of equitable discretion” such that courts should analyze “traditional equitable principles” before granting. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 288, 391–92 (2006). A plaintiff seeking permanent injunction should satisfy the following four-factor test before a court may grant such relief (“equitable factors”): that (1) the plaintiff has suffered an irreparable injury, (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury, (3) considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted, and (4) the public interest is not disserved by a permanent injunction. *See id.* at 391.

First, when “infringement is shown, irreparable injury is generally presumed in a trademark case.” *T-Mobile USA, Inc. v. Terry*, 862 F. Supp. 2d 1121, 1133 (W.D. Wash. 2012); 15 U.S.C. § 1116 (“A plaintiff seeking any such injunction shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction”). Since the Court therefore presumes irreparable

1 injury under 15 U.S.C. § 1116, and the defaulting Defendants fail to provide any rebuttal of such
2 presumption, the first of the equitable factors is met.

3 Second, as Plaintiffs note, this Court previously found that the second factor favored the
4 plaintiffs in a case where the plaintiffs requested a similar injunction because “the reputational
5 damage caused by counterfeiting is difficult to quantify and Defendants’ failure to respond
6 suggests their infringing activities may continue. The second equitable factor also weighs in
7 favor of injunction, so that repetitive lawsuits will be unnecessary.” *Amazon.com Inc. v. Zhi*,
8 2024 WL 943465, at *5–7 (W.D. Wash., Mar. 4, 2024). The Court comes to the same conclusion
9 here.

10 Third, the balance of hardships also supports the injunction sought by Plaintiffs. Without
11 an injunction, Defendants could continue selling counterfeit Oofos products and cause continued
12 hardship for Plaintiffs whether financially or through requiring additional lawsuits to enforce
13 Plaintiffs’ rights.

14 Fourth, a permanent injunction serves the public interest by protecting the rights of
15 trademark holders and minimizing consumer confusion and the risk of purchasing fraudulent
16 merchandise. *See Amazon.com, Inc. v. White*, No. C20-1773-JHC, 2022 WL 1641423, at *7
17 (W.D. Wash. May 24, 2022) (citing *Treemo, Inc. v. Flipboard, Inc.*, 53 F. Supp. 3d 1342, 1368
18 (W.D. Wash. 2014)); *Amazon.com Inc. v. Robojap Techs. LLC*, No. C20-694-MJP, 2021 WL
19 5232130, at *4 (W.D. Wash. Nov. 10, 2021)).

20 Accordingly, the Court grants the requested permanent injunction.

21 III. CONCLUSION

22 For the foregoing reasons, the Court GRANTS Plaintiffs motion for default judgment
23 (Dkt. 31), and JUDGMENT is entered against Defendants on Oofos’s Cause of Action for
24 Trademark Counterfeiting and Trademark Infringement (15 U.S.C. § 1114), Oofos’s Causes of

1 Action for False Designation of Origin and False Advertising (15 U.S.C. § 1125(a)), Amazon's
2 Cause of Action for False Designation of Origin (15 U.S.C. § 1125(a)), Plaintiffs' Cause of
3 Action for Violation of the Washington Consumer Protection Act (RCW 19.86.010 et seq.), and
4 Amazon.com Services LLC's Cause of Action for Breach of Contract.

5 The Court awards Oofos statutory damages in the amount of \$3,127,316 based on
6 Defendants' willful violations of the Lanham Act, as follows:

7 a. An award of \$1,021,733 against GuangMing Tang, for counterfeit sales from the
8 following Selling Accounts: "BH- Boston" and "Briceno LLC";

9 b. An award of \$852,151 against Kang Sun, for counterfeit sales from the following
10 Selling Accounts: "BricenoLLC." and "Empressiv Glow Hydration and Wellness, LLC.";

11 c. An award of \$208,520 against Wenjie Fan, for counterfeit sales from the following
12 Selling Account: "True LLC";

13 d. An award of \$524,631 against Xiaofei Liu, for counterfeit sales from the Selling
14 Account: "Antonious New";

15 e. An award of \$240,436 against Zhi Li, for counterfeit sales from the Selling Accounts:
16 "Angel Seller" and "Briceno LLC."; f. An award of \$101,975 against Yachun He, for
17 counterfeit sales from the Selling Account: "Angel Seller";

18 g. An award of \$174,980 against Haiqing Hu, for counterfeit sales from the Selling
19 Account: "Premier Outlets."

20 The Clerk is directed to enter judgment against each Defendant and in favor of Oofos in
21 the amounts set forth above.

22 The Court awards Amazon its actual damages for Defendants' breaches of contract as
23 follows:
24

1 a. An award of \$210,937 against Defendant GuangMing Tang for Amazon's damages
2 arising from the counterfeit sales from the following Selling Accounts: "BH- Boston" and
3 "Briceno LLC";

4 b. An award of \$175,647 against Defendant Kang Sun for Amazon's damages arising
5 from the counterfeit sales from the following Selling Accounts: "BricenoLLC" and
6 "Empressiv Glow and Wellness, LLC";

7 c. An award of \$41,994 against Defendant Wenjie Fan for Amazon's damages arising
8 from the counterfeit sales from the following Selling Account: "True LLC";

9 d. An award of \$116,605 against Defendant Xiaofei Liu for Amazon's damages arising
10 from the counterfeit sales from the following Selling Account: "Antonious New";

11 e. An award of \$46,517 against Defendant Zhi Li for Amazon's damages arising from the
12 counterfeit sales from the following Selling Accounts: "Angel Seller" and "Briceno
13 LLC";

14 f. An award of \$8,115 against Defendant Yachun He for Amazon's damages arising from
15 the counterfeit sales from the following Selling Account: "Angel Seller"; and

16 g. An award of \$37,013 against Defendant Haiqing Hu for Amazon's damages arising
17 from the counterfeit sales from the following Selling Account: "Premier Outlets."

18 The Clerk is directed to enter judgment against each Defendant and in favor of Amazon
19 for the amounts set forth above.

20 Defendants and their officers, agents, servants, employees, and attorneys, and all others
21 in active concert or participation with them who receive actual notice of the order, are hereby
22 permanently ENJOINED AND RESTRAINED from:

23 a. selling counterfeit or infringing products in Amazon's stores;

24 b. selling counterfeit or infringing products to Amazon or any Amazon affiliate;


1 c. importing, manufacturing, producing, distributing, circulating, offering to sell, selling,
2 promoting, or displaying any product using any simulation, reproduction, counterfeit,
3 copy, or colorable imitation of Oofos's brand or trademarks, or which otherwise infringes
4 Oofos's intellectual property, in any store or in any medium; and

5 d. assisting, aiding, or abetting any other person or business entity in engaging in or in
6 performing any of the activities referred to in subparagraphs (a) through (c) above.

7 The Court hereby retains jurisdiction over this case for the purpose of enforcing this
8 Order and Injunction, and for any supplemental proceedings that may be authorized by law.

9 Plaintiffs' counsel is hereby directed to serve a copy of this Order and Injunction on
10 Defendants' last known email addresses registered with the payment service provider Payoneer,
11 Inc., which Plaintiffs used to complete service.

12
13 Dated this 24th day of July, 2024.

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15 _____
16 Tiffany M. Cartwright
17 United States District Judge
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